

**Select Committee on Regeneration, Culture and Adult Education –  
7<sup>th</sup> September 2009**

**Report of the Director of the Urban Environment**

**Planning Obligations**

**S106 and Unilateral Undertaking Legal Agreements signed between 1<sup>st</sup> April 2008 and 31<sup>st</sup> March 2009, and planning obligation monies received and spent within the same period.**

**Purpose of Report**

1. To provide information on contributions that were received under the Town and Country Planning Act 1990 (as amended) and spent during the financial year of 2008/9 together with information on the S106 and Unilateral Undertaking Legal Agreements that were signed during 2008/09.

**Background**

2. For several years now this Committee has received reports on planning obligations received for each financial year from 2001/02. This report provides a summary of all the financial planning obligations received and spent during the 2008/09 financial year, along with information on the S106 Agreements and Unilateral undertakings that were signed during this period.
3. It may be helpful to set out the national background for seeking developer contributions. Circular 05/2005 (Planning Obligations) defines such undertakings as follows:

*“Planning obligations (or S106 Agreements) are private agreements negotiated usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or “developers”), and intended to make acceptable development which would otherwise be unacceptable in planning terms. Obligations can also be secured through unilateral undertakings.....”*

4. The Circular goes on to set out the background of development contributions; i.e. what can and cannot be sought during the processing of a planning application. Such obligations can prescribe the nature of the development (e.g. private affordable housing), compensate for loss arising (e.g. provide public open space) and mitigate against the impact of a development (e.g. enhanced off-site public open space). There are 5 tests to be applied in seeking contributions as follows:

- Relevant to the development
  - Relate in scale and kind to the development
  - Reasonable
  - Necessary to enable the development to take place
  - Directly related to the development
5. The planning obligations secured relate to the policies in the Council's adopted Unitary Development Plan 2005. The Planning Obligations Supplementary Planning Document (SPD) was originally adopted in December 2007 and expands upon the Unitary Development Plan 2005, aiming to reduce uncertainty and ensure a consistent approach to planning obligations across the Borough. It introduced a range of new planning obligations for future developments within the Borough.
- In line with good practice following its first year of implementation, a revised SPD was adopted in March 2009 in order to ensure that required planning obligations continue to be reasonable and realistic.
6. As set out in the SPD, planning obligations in the form of financial contributions are not held together in a central fund; rather they are kept within specific budgetary codes dependant upon the purpose of the contribution. These contributions must be spent within any timescales defined by the legal agreement, and any unspent monies are liable to be paid back to the developer with accrued interest.

### **S106 Agreements and Unilateral Undertakings signed 2008/09**

7. During 2008/09 a total of thirteen S106 Agreements and one Unilateral Undertaking were signed and these are detailed in **Appendix 1**. It is important to note that the signing of the legal agreement does not necessarily mean that contributions have simultaneously been received. There are two main reasons for this:
- In the majority of cases the payment of monies is not required until development commences.
  - The S106 is signed on the Outline Application but until the follow on Reserved Matters application has been approved no monies are required.

For these reasons there is often a time lag from when the legal agreement is signed to the receipt by the Council of the financial contributions.

### **Planning Contributions received and spent during 2008/09**

8. The areas of infrastructure and services that either received or spent planning contributions during 2008/09 were Affordable Housing, Open Space, Sport and Recreation, Libraries, Public Realm, Education and Transport Infrastructure. Each of the relevant services have procedures in place for the allocation and spending of monies received, including a procedure for consultation and engagement with Ward Members which was approved by this Committee in March 2009. However, please note that all of the spend allocations set out in this report were made prior to the introduction of this new procedure for Ward

Member engagement, and for this reason Members may not be aware of these allocated contributions.

### **Open Space, Sport and Recreation**

9. During 2008/09 contributions totalling £43,122.93 were received for Open Space, Sport and Recreation. During the same period a total of £539,363.89 was spent. Details of this income and spend are detailed in **Appendix 2**.

### **Affordable Housing**

10. No financial contributions for affordable housing were received during 2008/09. Of existing monies a total of £76,615 was spent. In terms of on-site provision of affordable housing a total of 200 dwellings were built in 2008/09. This comprised of 74 via S106 Agreements and the remaining having been provided by other means outside of the S106 process, for example funding from Homes and Communities Agency. Details of all affordable housing planning obligations can be found in **Appendix 3**.

### **Libraries**

11. Contributions totalling £531.52 were received during 2008/09 for library facilities, no monies were spent during the period. Details can be found in **Appendix 4**.

### **Public Realm**

12. Contributions totalling £1466.39 were received during 2008/09 for public realm facilities, no monies were spent during the period. Details can be found in **Appendix 4**.

### **Transportation**

13. During 2008/09 contributions received for Transport Infrastructure Improvements equated to £5,960.95 and no monies were spent. Details of exact income can be found in **Appendix 4**.

### **Education**

14. No financial contributions for education were received during 2008/09. A total of £120,000.00 of existing monies was spent during the same period on 2 different projects. £30,000 was spent on a new community centre in Milking Bank Primary School, £90,000 contributed towards a replacement primary school in Wrens Nest. Details can be found in **Appendix 5**.

### **Finance**

15. This report is financial in nature and relevant information is contained within the body of the report and the attached Appendices.

### **Law**

16. The relevant law is:

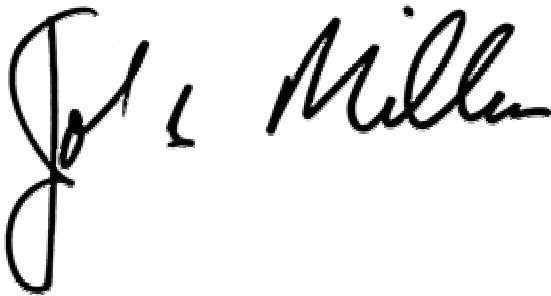
- S106 of the Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- Circular 05/2005 – Planning Obligations

### **Equality Impact**

17. The proposals take into account the Council's Equal Opportunities Policy and seek to enable all sections of the community (including young children and young people) within the Borough to gain from the effective implementation and planning obligations and the associated benefits envisaged.

### **Recommendation**

18. It is recommended that the Select Committee note the report.



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**J. B. MILLAR**  
**DIRECTOR OF THE URBAN ENVIRONMENT**

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### **List of Background Papers**

*Circular 05/2005 – Planning Obligations*  
*Planning Obligations Supplementary Planning Document*  
*Dudley Unitary Development Plan*